

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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PROVIDENCE ZUMBO, as Administratrix of the	:
Estate of JOHN ZUMBO a/k/a JOHN D. ZUMBO,	:
	:
	:
Plaintiff,	:
	:
-against-	:
	:
	:
T. AND B. EQUIPMENT COMPANY, INC.,	:
ALLEN GEORGE ROTHENBERGER,	:
	:
Defendants.	:
	:
	:
-----X	

07-CV-6340 (LMM)

**DECLARATION IN  
SUPPORT OF  
PLAINTIFF'S IN LIMINE  
MOTION**

**JOSEPH P. TUCKER**, declares as follows under penalty of perjury:

1. I am an attorney and a partner with the law firm of Kurzman Karelson & Frank, LLP and a member of the Bar of this Court. I submit this affidavit in support of Plaintiff Providence Zumbo, as Administratrix of the Estate of John Zumbo a/k/a John D. Zumbo ("Plaintiff") motion seeking a ruling that under New York choice-of-law rules, Connecticut has substantial interests in applying its wrongful death statute in this matter, and thus, the law of Connecticut, as the domicile of the decedent as well as the state in which Letters of Administration for the decedent's estate have been issued to Plaintiff, governs the issue of damages herein, thus permitting Plaintiff to introduce evidence of (i) the destruction of the decedent's earning capacity; (ii) the value of decedent's lost enjoyment of life; and (iii) the decedent's conscious pain and suffering.

2. The following documents are annexed hereto and made a part of the record in this motion.

3. Annexed hereto as **Exhibit A** is a copy of the Complaint dated July 11, 2007.

4. Annexed hereto as **Exhibit B** is a copy of Defendant's Answer dated August 28, 2007.
5. Annexed hereto as **Exhibit C** is a copy of pertinent pages of the examination before trial of defendant Allen Rothenberger dated June 11, 2008.
6. Annexed hereto as **Exhibit D** is a copy of pertinent pages of the examination before trial of Plaintiff Providence Zumbo dated May 30, 2008.
7. Annexed hereto as **Exhibit E** is a copy of pertinent pages of the examination before trial of Michael Kelly dated July 29, 2008.
8. Annexed hereto as **Exhibit F** is a copy of the autopsy report of Joh Zumbo dated July 17, 2006.
9. Annexed hereto as **Exhibit G** is a copy of the report of Plaintiff's expert Dr. Roh dated July 1, 2008.
10. This motion is based on all of the pleadings and papers already on file in this action together with:
  - a. This document and the Exhibits annexed hereto;
  - b. The Memorandum of Law filed in support of this Motion; and
  - c. The proofs of service attached to all of the documents described above.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FORGOING IS  
TRUE AND CORRECT.

Dated: New York, New York  
August 15, 2008

KURZMAN KARELSEN & FRANK, LLP

By: 

Joseph P. Tucker (JT2006)  
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